



Working Group on Business and Human Rights
Report to the 50th session of the Human Rights Council on
“COVID-19 pandemic: lessons learnt and moving forward”

Below is the response of the International Trade Union Confederation (ITUC) and the International Transport Workers Federation (ITF) to the questionnaire of the Working Group on Business and Human Rights on Covid-19 pandemic: lessons learnt and moving forward;

Q1. Most significant obstacles and challenges

The COVID-19 pandemic has exposed the fragility of global supply and value chains and the enormous risks to human and labour rights in a highly interconnected global economy.

The economic and social disruption caused by the pandemic threatens the long-term livelihoods and wellbeing of millions and deepens inequalities.¹ 94% of workers producing goods and providing services to global companies are hidden workers and not directly hired by their economic employer². Particularly vulnerable to the worst impacts of the crisis are the millions of workers lower down the supply chain – often predominantly **women** and the primary caregivers in their families and communities. These workers, integral to the global economy, already faced poverty wages, dangerous and unsafe working conditions and very few or no social protections and no guarantee of rights.

Furthermore, the crisis has harshly affected millions of **migrant workers**, who are often the first to be laid off but the last to benefit from any support. Migrant workers also face unique risks, as a result of inadequate and crowded living conditions, harsh containment measures and discrimination.

Precarious workers, casual workers and workers in the informal economy are also disproportionately exposed to the negative consequences of the pandemic given the lack of protection and the precariousness of their employment relationship.³

The pandemic has also particularly affected **disabled workers, youth, equity seeking groups and people of colour** in the workplace.

¹ According to ILO estimates, in 2020, 8.8 per cent of global working hours were lost relative to the fourth quarter of 2019, equivalent to 255 million full-time jobs. During 2021, recovery stalled and global working hours remained significantly below the level attained pre-pandemic, at -4.7 per cent (137 million full-time jobs) in the third quarter. See ILO Monitor: COVID-19 and the world of work, 8th edition, October 2021: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf

² See https://www.ituc-csi.org/IMG/pdf/pdffrontlines_scandal_en-2.pdf

³ Since the start of the pandemic, there has been increased reliance on these forms of work and all risk impairing the quality of working conditions. See ILO World Employment and Social Outlook, Trends 2022, p.3: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_834067.pdf



The crisis also saw companies cancel orders, postpone payments and otherwise withdraw from fulfilling contracts with subcontractors and suppliers, invoking ‘force majeure’ clauses in their contracts to prevent delivery and payment for produced orders. This affected many workers along the supply chains.⁴ In an

ITUC Covid19 Survey in May of 2020, out of 100 countries surveyed, 87 reported that companies in their countries were laying off workers⁵.

As the Covid-19 pandemic and the travel restrictions put in place to attempt containment dragged on, around 500,000 merchant were trapped aboard ships in violation of international law. Many continue to be on board without access to shore leave for months beyond their original contracts. This not only contravenes international maritime regulations in place to protect the life, health and welfare of seafarers and avert environmental disaster, but amounts to an egregious mass breach of human rights raising concerns over the forced labour of this invisible workforce.

Similarly, for road transport worker, occupational risks increased including violence related to the theft of cargos of essential products and pharmaceuticals, and shortages of personal protective equipment. Some truckers are also facing financial distress as a result of lower freight rates, uncertainty about insurance coverage, and inadequate social protection for independent or informal drivers. The coronavirus pandemic has starkly exposed that access to decent sanitary facilities is truly a global issue. Lack of access to sanitary facilities is an affront to human dignity for all transport workers.

Platform workers in the so-called *gig economy* who are mostly misclassified as independent contractors were given essential or key worker status around the world– at least initially – but not given personal protective equipment. In some countries [Uber, Ubereats, rappi in Brazil and JustEat in Brazil] courts had to force platform companies to provide PPE to their workers.

In addition, governments and employers exploited the pandemic to infringe workers’ rights, deprive them of protections and punish them for speaking out. Despite being a fundamental right, freedom of association has been severely trampled by multinational enterprises and national and smaller businesses alike. The ITUC 2021 Global Rights Index⁶ documents how companies have pursued an anti-union agenda in the face of workers who have stood on the front line providing essential work to keep economies and communities functioning. For example,

- In **Bangladesh**, in June 2020, 3,000 Bangladeshi garment workers were dismissed as part of a union-busting exercise from three factories owned by the same company.

⁴ See “Wage theft and pandemic profits: The right to a living wage for garment workers”, Business and Human Rights Resource Center, March 2021: https://media.business-humanrights.org/media/documents/Unpaid_wages_v9.pdf. See also <https://www.reutersevents.com/sustainability/millions-garment-workers-face-destitution-fashion-brands-cancel-orders>

⁵ See ITUC Global Covid-19 Survey 25 May – 28 May 2020, Key findings, https://www.ituc-csi.org/IMG/pdf/200603_ituc_covid-19_globalsurveyreport_en.pdf

⁶See ITUC Global Rights Index: <https://www.globalrightsindex.org/en/2021> and the Executive Summary: https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN-final.pdf



- In **Brazil**, an agri-food processing multinational used the pretext of economic difficulties due to the COVID-19 pandemic to violate collective agreements and union consultation and massively lay off workers.
- Nearly a third of **Haiti's** 57,000 garment workers, struggling to survive in the midst of the pandemic, were suspended or terminated and have yet to receive any compensation from the government in spite of earlier promises.
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- In **Peru** a multinational home retailer dismissed 22 warehouse workers who had requested health and safety protections against the coronavirus.
- In **South Africa**, shop stewards at a car factory were dismissed for “inciting” workers to stop work after they exposed high numbers of workers testing positive for COVID-19.
- COVID-19 was used as excuse to single out trade union members for forced unpaid leave in **Turkey**.
- In **Zimbabwe**, union leaders were prosecuted after workers took strike action to secure outstanding pandemic allowances.

The right to collective bargaining was heavily undermined as businesses set aside obligations under Collective Bargaining Agreements (CBAs) without meaningful and good faith consultations⁷.

In other situations, governments suspended the operations of aspects of labour laws that protected workers including health and safety laws⁸.

Q2. Important lessons

The pandemic has laid bare the dominance of global supply chains in the global economy, the gaps that result and the adverse human rights and environmental impact arising from lack of global regulation⁹.

In Bangladesh, more than half of the garment suppliers reported that they had their in-process or completed production cancelled, which has led to massive job losses. More than 98.1% of buyers refused to contribute to the cost of paying the partial wages to furloughed workers required under national law. 72.4% of furloughed workers were sent home without pay.¹⁰

In many countries, measures adopted to contain the spread of the virus severely curtailed the exercise of fundamental rights and civil liberties, including in the workplace. These measures left many workers

⁷ See <https://www.ituc.org/sites/default/files/publication/file/2020-06/Covid-19%20Briefing%20Trade%20union%20rights%20and%20COVID-19%20updated%2010062020%20final.pdf>

⁸ See <https://www.reuters.com/article/us-health-coronavirus-india-workers-trfn-idUSKBN22P00H>

⁹ See https://www.ilo.org/global/publications/meeting-reports/WCMS_829895/lang--en/index.htm

¹⁰ ITUC, Towards mandatory due diligence in global supply chains, June 2020: https://www.ituc-csi.org/IMG/pdf/duediligence_global_supplychains_en.pdf



exposed to abuses and without a voice to defend their rights and interests, while enabling companies to act irresponsibly and often maliciously against workers and their unions.

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The COVID-19 pandemic cannot be used as a pretext to reduce workers' rights, in particular freedom of association and collective bargaining.¹¹ Full engagement of businesses with trade unions in social dialogue

is critically important in all aspects of the COVID-19 response, especially in preventing and mitigating the negative impacts of the pandemic on workers along the supply chain.

The risk to health and safety for workers has been front and centre. Working in isolation at home or choosing to work outside the home with concerns over breaching Covid curfew and other protocols¹². This choice falls squarely into the category of risk of “injury to health arising out of, linked with, or *occurring in, the course of*” employment as in the OECD Guidelines for Multinational Enterprises. This level of risk would require (particularly multinational) enterprises to ramp up company efforts in occupational safety and health accordingly. The Guidelines encourages business to respect ILO Convention 155 on protection of workers where they remove themselves from a work situation, with reasonable justification that it presents an “imminent and serious risk to health or safety”¹³. The Lesson is clear, a business failing to provide a safe and healthy working environment with measures that go far enough to protect against the indisputable increased risk of COVID-19 infection – that is, not providing the PPE, social distancing policies, training and enforcement necessary – would be an omission to prevent the risk of adversely impacting the three key rights discussed above¹⁴.

The ITUC's second global Covid19 survey reported that about 62% of Governments out of a sample of 67 countries had introduced national lockdown measures by 30 March to contain the virus¹⁵ and by April 2020, the ILO indicated that almost 2.7 billion workers, about 81 percent of the world's workforce, was under some form of national lockdown.¹⁶

According to the ILO, there was a 14 per cent drop-in global working hours during the second quarter of 2020, equivalent to the loss of 400 million full-time jobs (based on a 48-hour working week)¹⁷.

¹¹ ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), 91st session (Nov-Dec. 2020), para. 52: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_767351.pdf

¹² See article by **Ruwan Subasinghe** and **Helen Breese** <https://www.cambridge.org/core/blog/2020/04/08/covid-19-and-the-corporate-duty-to-respect-human-rights-its-time-for-the-business-community-to-step-up/>

¹³ See Amazon warehouse workers demand in this regard in March 2021

<https://www.theguardian.com/technology/2020/apr/20/amazon-warehouse-workers-sickout-coronavirus>

¹⁴ See footnote 11 supra

¹⁵ See International Trade Union Confederation (ITUC) Global Covid-19 Survey, 30 March – 2 April 2020, Key findings, https://www.ituc-csi.org/IMG/pdf/200407_ituc_covid-19_globalsurveyreport_en.pdf

¹⁶ International Labour Organization (ILO) Monitor: Covid-19 and the world of work, second edition, updated estimates and analysis, 7 April 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf

¹⁷ See ILO, Covid-19: Stimulating the economy and employment, 30 June, 2020, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749398/lang-en/index.htm



Telework arrangements increased with associated concerns over inadequate legal protections for telework including conditions for provision of tools for working at home, occupational health and safety, working hours and other working conditions as well as privacy protections for workers.¹⁸

In Spain, the Government introduced Telework Legislation in response to the COVID-19 outbreak and subsequent lockdown¹⁹. In Argentina, the Government also adopted Telework legislation²⁰.

Q.3 Available opportunities to access to effective remedy provided by the State and businesses for human rights harms occurred during the pandemic

The pandemic has revealed the inadequacy of mechanisms set up under voluntary corporate social responsibility to provide effective remedies to workers victim of abuses.

Labour inspections which play a key role in identifying risks to compliance with labour legislation including collective agreements and arbitration orders were non-operative in many cases. Challenges to workers when accessing justice through State Judicial mechanisms were further complicated including delays and reliance on online hearings.

Social Dialogue was relied upon to address the emergency brought on by the pandemic. According to an ILO Briefing Paper on Social Dialogue one year after the Pandemic²¹ joint statements and agreements were reached through social dialogue between governments and national, high-level or sectoral-level organizations of employers and workers were used to address issues such as supporting workers and enterprises and promoting long-term recovery and resilience.

In Portugal, the State has regularized the status of non-nationals, including asylum seekers with pending applications, thus entitling them to healthcare, employment, social support and housing²².

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization (ILO) adopted guidance on the “Application of International Labour Standards in times of crisis: the importance of international labour standards and effective and authoritative

¹⁸See Washington post news article September 4, 2020 on “While Covid-19 continues to force remote work, Europe looks to enforce a right to disconnect”, https://www.washingtonpost.com/world/europe/coronavirus-remote-work-europe/2020/09/04/6e4a19c6-e23e-11ea-82d8-5e55d47e90ca_story.html

¹⁹ See Royal Decree Law 28/2020

²⁰See

https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID.P13100_LANG_CODE:4058620.en

²¹ See Research Brief on Social dialogue one year after the outbreak of the Covid-19 pandemic: Spotlight on outcomes

https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_802527.pdf

²² See https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_826684.pdf



supervision in the context of the COVID-19 pandemic”²³. Also the CEACR has adopted guidance on “the role of international labour standards and effective and authoritative supervision as the foundation of the global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient as well as the impact of the COVID-19 pandemic on the application of international labour standards”.

Q.4 Dialogue with trade unions and workers to address business-related human rights abuses during the pandemic

Of key important to the success of human rights due diligence is the meaningful and effective involvement of workers and their representatives in the entire due diligence process.

The centrality of freedom of association and of collective bargaining to social dialogue is recalled in several international texts, including the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO MNE Declaration, revised in 2017) which incorporate UNGP language and leaves no doubt that Fundamental Principles and Rights at Work are to be respected by business. Similarly, the OECD Due Diligence Guidance for Responsible Business Conduct adopted in 2018 lays out how credible human rights due diligence is informed by stakeholder engagement and further specifies that “stakeholders” include workers, workers’ representatives, trade unions, and Global Unions.

Freedom of association and collective bargaining are the cornerstone of effective human rights due diligence and indispensable in the movement towards decent work for all. More than ever, businesses must engage in social dialogue with trade unions at all levels and stages of the supply chain.

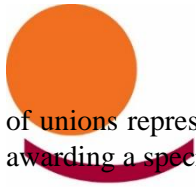
The UN Human Rights Office, the UN Global Compact, the International Labour Organization (ILO) and the International Maritime Organization (IMO) together with International Chamber of shipping and the International Transport Workers’ Federation issued new guidance for businesses engaged with the maritime industry to ensure the human rights of seafarers are upheld during the COVID-19 pandemic²⁴. Under the UN Guiding Principles on Business and Human Rights (UNGPs) businesses have a distinct responsibility to respect the human rights of seafarers as workers along their value chain. With the maritime industry responsible for transporting over 80% of global trade goods, multinational and national enterprises of all sizes are connected to the shipping industry through their operations, logistics and broader value chains. The guidance provides a checklist of actions for cargo owners (economic employers), charterers and other supply chain actors.

Social dialogue formed a key part is anticipating and addressing breaching of conditions of service rights²⁵. For example, in Argentina, the Argentine Federation of Commercial Employees (FAECYS), a federation

²³ See 2021 Report of the CEACR https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771042.pdf

²⁴ <https://unglobalcompact.org/library/5886>

²⁵ See Addendum to the ILO 2020 General Survey https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_775883.pdf



of unions representing retail workers, negotiated a protocol with the National Hypermarkets Association awarding a special bonus to workers in grocery stores²⁶.

In the United States, unionized grocery store employees at several national supermarket chains successfully negotiated temporary hazard pay, 14 days paid sick leave for COVID-19 cases, authorization for workers to wear masks and gloves at work, and measures to protect employees from customers (such as barriers at checkout, limits on the number of customers that may be in the store at the same time, and signage to encourage social distancing)²⁷.

²⁶ UNI Global Union, “Argentina battles Covid-19 with trade union support”, 2 April 2020.

²⁷ <https://www.ufcw.org/press-releases/krogercoronavirus/>